

from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting classified or privileged information or documents.

(b) *Depositions.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) *Orders on Depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(2) *Use as Evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by a party, the Board will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the

request shall be deemed admitted upon the failure of a party to respond to the request for admissions.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Expenses.* Each party shall bear its own expenses associated with discovery, unless for purposes of hardship or other reasons in the sound discretion of the Board, the expenses should be apportioned otherwise.

#### § 703.115 Subpoenas.

On application by a party, the Chairman of the Board, or other Board member, may, upon a showing of general relevance, issue subpoenas requiring the attendance and testimony of witnesses or the production of documents, or other things. An application for subpoena shall identify the name, title, and address of the person to whom the subpoena is to be directed, and the time and place where that person is to appear to give testimony or to produce specified documents or other things.

#### § 703.116 Service of papers, and time computation.

(a) A copy of all pleadings, briefs, or other papers shall be served on the other party or parties, and four copies simultaneously filed with the Board at the Department of Energy, Washington, DC 20545. Service shall be made by delivery of a copy, or by mailing the same, addressed to the party upon whom service is to be made or his attorney.

(b) For purposes of time, computation, and extensions:

(1) All time limitations specified for various procedural actions are computed as maximums, and are not to be

fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown;

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day; and

(3) Requests for extensions of time from either party shall be made in writing and state good cause therefor.

#### HEARINGS

##### **§ 703.117 Where and when held.**

Hearings will ordinarily be held in the Washington, DC area, except that upon request reasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance or extend a hearing.

##### **§ 703.118 Notice of hearings.**

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay.

##### **§ 703.119 Unexcused absence of a party.**

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 703.111.

##### **§ 703.120 Nature of hearings.**

(a) Hearings shall be as informal as the Board may consider to be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as each deems appropriate and as would be admissible under the Federal Rules of Evidence (Pub. L. 93–595, 88 Stat. 1926, January 2, 1975), subject, however, to the sound discretion of the Board, or presiding administrative judge in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member.

(b) The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

##### **§ 703.121 Examination of witnesses.**

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board shall otherwise order. If the testimony of a witness is not given under oath, the Board shall invite the attention of the witness to the provisions of title 18, U.S.C. 287 and 1001.

##### **§ 703.122 Copies of papers.**

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

##### **§ 703.123 Posthearing briefs.**

Posthearing briefs may be submitted upon such terms as may be agreed upon